

Panaji, 24th June, 1991 (Ashadha 3, 1913)

SERIES II No. 12

OFFICIAL GAZETTE

GOVERNMENT OF GOA

EXTRAORDINARY

No. 4

GOVERNMENT OF GOA

Legislature Department

Notification

No. LA/A/723/1991

The following decision dated 20th June, 1991 of the Speaker of Legislative Assembly of State of Goa given under Rule 7(2) of the Members of Goa Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 framed under the Tenth Schedule of the Constitution of India is hereby notified and published.

"Before the Honourable Speaker, Legislative Assembly Goa, Panaji.

Reference No. 2 of 1991

Dr. Kashinath Jalmi, M.L.A. — Petitioner.

V/s

Shri Shankar Salgaonkar, M.L.A. — Respondent.

Reference No. 3 of 1991

Dr. Kashinath Jalmi, M.L.A. — Petitioner.

V/s

Shri Vinaykumar Usgaonkar, M.L.A. — Respondent.

Reference No. 4 of 1991

Dr. Kashinath Jalmi, M.L.A. — Petitioner.

V/s

Shri Pandurang D. Raut, M.L.A. — Respondent.

Reference No. 5 of 1991

Dr. Kashinath Jalmi, M.L.A. — Petitioner.

V/s

Shri Ashok T. Naik Salgaonkar, M.L.A. — Respondent.

In the matter of Petition under article 191(2) read with para 2(a) of the Tenth Schedule of the Constitution of India.

COMMON ORDER

By this Common Order, I will dispose off 4 separate applications referred to above filed by the Petitioner against the Respondents as the facts, circumstances and the issues involved in all these 4 cases are identical. The question of law involved in all these petitions is also the same.

2. In brief, the facts are that the petitioner has filed 4 separate applications against the Respondent under Article 191(2) read with para 2(a) of the Tenth Schedule of the Constitution of India praying that the Respondents be declared as disqualified for being a Member of the Legislative Assembly on the grounds that the Respondents have themselves sworn-in as a Cabinet Ministers on 12-2-1991 at 5.00 p. m. by voluntarily giving up the membership of their original party i.e. Maharashtrawadi Gomantak Party.

3. The Respondents were directed to file their comments within 7 days in accordance with the provisions of Rule 7 of the Goa, Daman and Diu Legislative Assembly (Disqualification) on the ground of Defection Rule 1986 (hereinafter referred to as the "Rules"). All the Respondents sought one month's time on the ground mentioned in their applications all dated 21-2-1991 which was granted by my predecessor. Accordingly, the Respondents filed their reply/comments on 18-3-1991 duly supported by their individual affidavits. The personal hearing was taken up on 19-4-1991. The Petitioner attended in person, whereas all the Respondents were represented by their Advocate. I have heard the arguments of the Petitioner as well as the Advocate of the Respondents.

4. Before, I discuss the merits of these cases, I would like to dispose off the preliminary objections raised by the Petitioner during the course of his arguments. The Petitioner raised preliminary objections to this proceedings under para 6(1) of the Tenth Schedule of the Constitution of India stating that the decision of question as to disqualifications on ground of defection shall be decided by the Speaker and not by Deputy Speaker. He contended that although Article 180 of the Constitution of India provides that during the vacancy in the office of the Speaker, the Deputy Speaker shall perform the duties of the office of the Speaker which means that only administrative functions can be performed. He emphasized that the Deputy Speaker is not authorised to perform the powers of the Speaker under the Tenth Schedule of the Constitution of India which are special powers given to the Speaker to interpret the provisions of the Constitution and, therefore, be submitted that it is only the Speaker and not the Dy. Speaker shall decide the issues of disqualifications.

5. The Advocate for the Respondents submitted that in terms of Article 180(1) of the Constitution of India, when office of the Speaker is vacant, the duties of the office of the Speaker shall be performed by the Deputy Speaker and if the office of the Deputy Speaker is also vacant then by such Member as may be determined by the Rules of the Procedure of the Assembly. Therefore, he submitted that during the absence of the Speaker, the Dy. Speaker shall perform the duties of the Speaker and as such, he is competent to decide the matters arisen out of the Tenth Schedule of the Constitution. Therefore according to him, the preliminary objections raised by the Petitioner goes.

6. Therefore, the first question that arises for my determination is whether the Dy. Speaker is competent to decide the questions arising out of the Tenth Schedule of the Constitution of India. Para 6 of the Tenth Schedule of the Constitution

of India contemplates that if any question arises as to whether the Member of the House has become subject to disqualification under the Tenth Schedule, the question shall be referred to for the decision of the Chairman or as the case may be the Speaker of the such House and his decision shall be final. Provided when the question arises as to whether the Chairman or the Speaker of the House has become subject to such disqualification the question shall be referred to for the decision of such Member of the House as the House may elect in this behalf and his decision shall be final. The term Speaker has not been defined in the Tenth Schedule of the Constitution of India. Being so, the term "Speaker" has to be read with the other provisions of the Constitution of India. As rightly pointed out by the Advocate for the Respondents that under Article 180 of the Constitution of India, the Dy. Speaker has to perform the duties of the office of the Speaker while the office of the Speaker is vacant. In the instant case, it is an admitted fact that the office of the Speaker is vacant. Therefore, it is beyond doubt that the Dy. Speaker has to perform the duties of the office of the Speaker. The provisions of Article 180 of the Constitution of India are mandatory in nature. This article gives ample power to the Dy. Speaker to perform and exercise the duties of the Office of the Speaker when the office of the Speaker is vacant. Therefore, the preliminary objections raised by the Petitioner does not survive. Being so, I overrule the preliminary objections raised by the Petitioner and consequently, I hold that the Officiating Speaker is competent and empowered to decide the matters arising out of the Tenth Schedule of the Constitution of India when the office of the Speaker is vacant.

7. After having argued on the preliminary objections, the Petitioner prayed that he may be permitted to examine some of the witnesses and further stated that one of the Witnesses namely Shri Vinaykumar Usgaonkar is present. The other two witnesses which the Petitioner wanted to examine are Ratnakar Chopdenkar and Sanjay Bandekar. The Advocate for the Respondents objected for the examination of these witnesses on the ground that they are Parties to the proceedings who are sought to be disqualified and being so they cannot be called as their own witnesses. The Advocate further contended that in the event the Petitioner wanted to examine any other witness he could do so by proper application or a proper list being given. He also submitted that the Parties are defending the charge which is made against them and they cannot depose under the Evidence Act against themselves. In reply, the Petitioner submitted that the present proceedings are the proceedings in the House and the Rules of Business of the House. If a statement is required from any Member of the House for the purpose of determining any question that is to allow and which has been also allowed earlier in many of the proceedings in a Committee of the House. He also contended that the Petitioner does not want that the witnesses should give any evidence against him or against anybody or in favour or against the Petition but for the purpose of determining the factual position, so that the Chair may know what is happening exactly. He also submitted that the Hon'ble Chairman is competent enough to ask any person to be before the Bar of the House if the House so requires to give in any of the Evidences or any knowledge or any of the information. He also submitted that S/Shri Ratnakar Chopdenkar and Sanjay Bandekar are not the Parties in this Petition.

8. The Advocate for the Respondents submitted that if the Petitioner wants to examine these 2 witnesses namely S/Shri Ratnakar Chopdenkar and Sanjay Bandekar he ought to have cited them as witnesses or produce them today to adduce evidence. He further contended that the matter is fixed for hearing. That apart, there is no application for summons to these witnesses. The normal procedure is that the witnesses are brought by the Parties and in case the Parties cannot secure their attendance, they have to move an application praying for the issue of summons. In the instant case, the Advocate for the Respondents submitted that the Petitioner has not brought his witnesses nor moved any application. He also mentioned that the Petitioner did not bother to cite them as witnesses in as much as the matter was adjourned and was fixed on 12th April 1991. The Petitioner had sufficient time to furnish the list of the witnesses or atleast secure the attendance of witnesses for today's hearing which he has failed to do.

9. The Petitioner stated that he would put up his application in writing at the end of the arguments of the matter on merits. After the arguments were heard, the Petitioner filed an application praying that he would like to examine S/Shri

Vinaykumar Usgaonkar, Ratnakar Chopdenkar and Sanjay Bandekar as his witnesses in the case No. 3/1991.

10. Although the Petitioner made the application to examine the said witnesses at the fag-end of the hearing after he argued the matter on merits, I propose to dispose of the application at the outset.

11. The element of time when the application was made has an important bearing on the application. If the Petitioner was serious in seeking to examine any witness, nothing precluded the Petitioner from making the application in writing at the beginning of hearing or atleast bring along the said witnesses and tender them for examination. The Petitioner also does not seek the adjournment of the matter to enable him to produce this witness but after having chosen to argue the matter on merits, decides to make the application for summoning 3 witnesses which he proposes to examine. One person whom the Petitioner proposes to examine as his witness is the Respondent himself. It is a settled law that a man cannot be called upon as his own witness to say he is guilty of something or he has committed some wrong. The entitlement, therefore, of the Petitioner to examine Shri Usgaonkar does not stand the test of law.

12. As far as the other two persons are concerned whom the Petitioner seeks that summons should be issued are Mr. Ratnakar Chopdenkar and Mr. Sanjay Bandekar. At the outset, the Petitioner has not stepped into the box himself to establish his case. But at random he proposes to examine the said witnesses and that too on summons to be issued by me. There is no set procedure for issuing of summons but the Rules of the House contemplate as to how witnesses are to be examined on summons.

13. I am not averse to the Petitioner examining any witnesses but here the attempt seem to be half-hearted as first of all the Petitioner did not off himself to give any evidence and submit to cross-examination. However, the Petitioner after having chosen to argue the matter on merits instead of making the application for adjournment to adduce evidence, makes an application for summoning the said persons as his witnesses. Nothing precluded the Petitioner who had to open his case from bringing the said witnesses and offering them for cross-examination of the Respondent or atleast make an application at the inception of hearing for summons justifying as to why he could not produce the said witnesses before me. So in this set of circumstances and as the Petitioner has chosen to argue the matter on merits, I do not see any reason and/or justification to allow the application of the Petitioner for examining the said witnesses. On the merits of the case, the Petitioners claim that the Respondents have incurred disqualification for being Members of the House as they are allegedly rendered vulnerable to disqualification under the provisions of Art. 191(2) of the Constitution of India read with para 2(a) for voluntarily giving up the membership of the original Party, I have already decided the relevant issues which arise for consideration here, in my Judgement passed in Review Petitions decided by me by Orders dated 7.3.1991 and 8.3.1991.

14. The arguments which had been advanced in this case by the Petitioner are similar to those advanced in those cases decided by me.

15. The respective cases of the Petitioners in those review petitions are similar to the case of the Respondents in this petition. They claim that at a meeting held at Ponda at the residence of Mr. Ravi Naik on 24.12.1990 there was a split in the original Maharashtrawadi Gomantak Legislature Wing of the Party and as a result of the split the Respondents alongwith others including one Shri Dharma Chondankar Chodankar formed the group under the leadership of Shri Ravi S. Naik. But, however, the said Dharma Chodankar had decided to go back to his original Party thereafter. Their case therefore has been that they are covered by para 3 of the Tenth Schedule of the Constitution and the petition against them should be dismissed.

16. In the said two review orders of mine in substance I have, in fact, held that there was a split in the original Maharashtrawadi Gomantak Party and as a result of this split, a Group consisting of the Respondents and 4 other M. L. As under the leadership of Shri Ravi S. Naik was constituted.

17. I have observed in my orders passed in those cases that I would not express any opinion in the matter of Respondent's claim of Shri Dharma Chodankar going back to his original MGP after the split in order not to in any way infringe

upon his rights without a proper application filed against him and without he being heard in the matter.

18. In the light of the relevant findings contained in the said Judgement, I hold that in the instant case the Respondents are covered by para 3 of the Tenth Schedule of the Constitution of India. As a matter of fact, there was a split in the M. G. Party on 24.12.1990 where the Respondents alongwith 4 other M. L. As belonging to the M. G. P. constituted themselves as splinter group to be named as Maharashtra Gomantak Party (Shri Ravi Naik Group). The Petitioners have not produced before me any piece of evidence or material on record to reach to the conclusion contrary to the one arrived by me in the said 2 Orders. I, therefore, in the light of the above, dismiss the said 4 petitions filed by the

Petitioner by this common order. I direct that this Order be ordered to be published in the Official Gazette and the copies of the Order be forwarded to the Secretary to the Election Commissioner of India and the Government of Goa.

Sd/-

(SIMON PETER D' SOUZA)
SPEAKER"

Dated: 20th June, 1991.

ASSEMBLY HALL

Panaji-Goa

21st June, 1991.

M. M. Naik

Secretary to the Legislative
Assembly of the State of Goa